



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords sought a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the Regulations, or the tenancy agreement, authority to retain the security deposit and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Landlord's property manager, R.H., testified on behalf of the Landlords. She confirmed that the tenancy began November 2012. Monthly rent was payable in the amount of \$1,400.00 and the Tenants paid a \$700.00 security deposit.

A copy of the Move-in Condition Inspection Report, which appears to have been conducted on October 30, 2012 but signed November 1, 2012, was introduced in evidence.

The tenancy ended on January 31, 2016. The move out inspection was recorded on the same form as the move in and indicates the report was done on January 31, 2016.

The Landlords applied for dispute resolution on February 15, 2016 seeking the sum of \$1,200.00 in addition to the filing fee of \$100.00 for a total of \$1,300.00.

R.H. testified that the rental unit was brand new such that no other person had lived in the rental unit before the Tenants.

On September 22, 2016 the Landlords submitted evidence in support of their application including a typed document setting out the total claimed as follows:

Refinishing cabinets due to water stains	\$251.51
Removing liner in cabinets and clean toilet bowl	\$108.67
Replace en-suite sink	\$185.00
Repair water damage to floor in front of fridge and various scratches, chips in living room and kitchen	\$225.00
Labour for fridge door replacement	\$164.00
Fridge door replacement due to two dents	\$398.91
Filing fee	\$100.00
TOTAL CLAIMED	\$1,433.09

Also attached to the September 22, 2016 evidence package were photos of the alleged damage and copies of invoices relating to the above claimed amounts. These invoices were dated between February 2016 and April 2016. R.H. testified that it was her hope that this matter could be resolved by agreement and as such she did not submit the above invoices until September 22, 2016.

The photos are taken close up and depict the following:

- a cabinet door with what appears to be water discolouration;

- a toilet bowl with what appears to be mineral buildup;
- a close up of two small chips in the vanity sink;
- a close up four planks of wood flooring with what appears to be discolouration on two planks;
- a close up of three planks of flooring showing a small nick on the seam between two planks
- a close up of three planks of flooring showing three scratches; and,
- a close up of a stainless steel refrigerator door showing a small dent;

R.H. confirmed that it is the property owners' position that the above depict damage and are not representative of reasonable wear and tear.

B.D. testified on behalf of the Tenants.

B.D. stated that the Tenants believe that the occasional scratches and marks were reasonable wear and tear reflective of a three year tenancy and not damage. He stated that he and his wife cared for the home as if they were the owners.

B.D. confirmed they put in a liner for the drawer for the pots and pans and conceded that the adhesive may have been too strong. He also confirmed he did not have permission from the Landlords to install the liner.

With respect to the alleged water damage on the flooring in front of the refrigerator, B.D. stated he did not notice any accumulation of water and that he suspected it was merely caused by water dropping off produce.

In response to the Landlords' claim regarding a dent in the fridge he responded that this "caught them by surprise" as the Tenants do not recall a dent in the fridge at any time.

B.D. testified that the chip in the sink was repaired by the Landlords' "handyman", and he was disappointed to see the Landlords felt this was inadequate.

B.D. further testified that they employed professional cleaners and carpet cleaners at the end of the tenancy.

B.D. further testified that a small chip in the flooring, as well as the scratches, were reasonable wear and tear and easily repaired.

In all the circumstances, B.D. submitted that the Landlord's claim should be dismissed in its entirety.

The Tenants further submit that the power use for the heating and cooling were unreasonable. He stated that there was a leak in the air-conditioning unit and the Tenants paid approximately \$500.00 in extra power bills. He stated that they never asked for compensation for these amounts.

B.D. also stated that the property owner refused to discuss the amounts claimed and insisted on attending arbitration.

Analysis

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides in part as follows:

“...The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)², or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An

arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant..."

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlords have the burden of proof to prove their claim.

After careful consideration of the evidence before me and the testimony of the parties I find as follows.

I accept the Landlord's evidence that the cabinets were water damaged by the Tenants. The photos submitted in evidence depict water damage which suggests that cabinets were not wiped when needed. As the cabinets were new at the start of the tenancy, I

find it reasonable for the Landlords to expect them to be in better condition after a three year tenancy than the photos depict.

The Tenants conceded they put liner in the cabinets with strong adhesive. I accept the Landlords' evidence that they paid a handyman \$108.67 to remove the liner as well as to clean the toilet. *Residential Tenancy Branch Policy Guideline 1* provides that unless the tenant has the landlords express consent to make changes to the rental unit, the tenant must not make any changes, and if they do, they must return the unit to the condition it was at the start of the tenancy. In this instance, I find that the amounts claimed by the Landlord to remove the liner are reasonable. I also find that the mineral staining in the toilet required further cleaning the end of the tenancy. Accordingly, I award the Landlords compensation for these losses.

I further find that the sink was damaged by the Tenants. B.D. testified that the Landlords' handyman attempted to repair the damage however, the repair was insufficient. I award the Landlords compensation for replacing the sink.

The photos submitted by the Landlords show that the wood flooring was damaged by water in front of the refrigerator as well as being scratched and chipped at various places throughout the rental unit. I decline the Landlords request that I award them compensation for scratches to the floor. The Tenants resided in the rental unit for over three years and I find that the scratches on the floor are a result of normal wear and tear over a three year period. However, I find that the chips and water damage constitute compensable damage. The Landlords claimed the sum of \$225.00 for repairs to the flooring and I award them the sum of \$112.50 representing half of the amount claimed (as I have declined their request for compensation related to scratches).

I also decline the Landlords' request for compensation related to the refrigerator door. The small dents are similarly the result of reasonable wear and tear. The dents also do not render the refrigerator inoperable, nor would they devalue the rental had the Landlords re-rented, rather than occupied the rental.

When making awards for compensation related to damage to building elements, Arbitrators consider the age of those elements and make adjustments accordingly. I find that the Landlords' allowable claims must be similarly adjusted and I am guided by the *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* to arrive at the following amounts awarded:

Item	Useful life	Amount	Remaining	Adjusted
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		claimed	building life % adjustment	value
Cabinets	25 years	\$251.51	22/25 years 88%	\$221.33
Sinks	20 years	\$185.00	17/20 years 85%	\$157.25
hardwood floors	20 years	\$225.00 Reduced by 50% \$112.50	17/20 years 85%	\$95.63
Labour to remove drawer liner				\$108.67
TOTAL ALLOWED				\$582.88

As the Landlords have been partially successful, I award them, pursuant to section 72(1) recovery of half of the filing fee paid in the amount of \$50.00 for a total award in the amount of **\$632.88**.

Conclusion

The Landlords are granted compensation in the amount of \$632.88. Pursuant to sections 38 and 72, I authorize them to retain this amount from the Tenant's \$700.00 security deposit.

The Tenants are therefore entitled to return of the balance of their security deposit in the amount of \$67.12. Accordingly, I grant them a Monetary Order pursuant to section 67 of the *Act* for this amount. They must serve the Order on the Landlord and may, if required, file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

The Tenants testified that they incurred extra utility charges as a result of issues with the heating and cooling system. They are not able to make a claim through the Landlords' Application and if they wish to seek further compensation, they must bring an application within the required timelines.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 7, 2016

Residential Tenancy Branch

